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EXAMINER	
LEUNG, JENNIFER A	
ART UNIT	**PAPER NUMBER**
1764	7

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Please find below and/or attached an Office communication concerning this application or proceeding.

FWM

Office Action Summary	Application No.	Applicant(s)	
	09/191,702	O'HAM, JEFFREY K.	
	Examiner	Art Unit	
	Jennifer A. Leung	1764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-35* is/are pending in the application.

4a) Of the above claim(s) *20-35* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1-35* are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *13 November 1998* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *4,6* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

   I. Claims 1-19, drawn to an apparatus for separation of waste constituents, classified in class 422, subclass 184.1.

   II. Claim 20-35, drawn to a method for the separation of waste constituents, classified in class 588, subclass 205.

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus as claimed can be used to practice another and materially different process, such as purification of gases by adsorption.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, recognized divergent subject matter, and search required for Group I not required for Group II, restriction for examination purposes as indicated is proper.

During a telephone conversation with Blair Taylor on August 31, 2000, a provisional election was made without traverse to prosecute the invention of an apparatus for separation of waste constituents from matrices, claims 1-19. Affirmation of this election must be made by applicant in replying to this Office action. Claims 20-35 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

a. Claim 2: means for generating a vacuum.

b. Claim 13: means for the introduction of chemical treatment additives.

c. Claim 16: means for remotely monitoring operation of the apparatus comprising a controller system, transducers and a computer.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "4" and "9" have both been used to designate "hydraulic motor". Likewise in the following:

a. "7" and "10" both designate "drive sprocket"

b. "6" and "11" both designate "drive chain"

c. "5" and "12" both designate "slave sprocket"

d. "2", "13", "18" and "26" all designate "slotted screened bottom tray"

e. "3" and "15" both designate "mixing flight"

f. "21" and "23" both designate "dump gate latch"

g. "19" and "24" both designate "hinge to dump gate"

h. "22", "25", "28" and "28a" all designate "pick-up pocket"

4. The drawings are objected to because the use of solid black shading areas is not permitted, except when used to represent bar graphs or color. See 37 CFR 1.84(m).

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings have not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the drawings.

Specification

5. The disclosure is objected to because of the following informalities. Appropriate correction is required.

a. Description of Figure 1 (pages 13-14) should be inserted before "Figure 2:" (page 11, line 25).

b. --(MCS)-- should be inserted after "Separator" on page 8, line 3

The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Objections

6. Claims 9 and 14 are objected to because of the following informalities. Appropriate correction is required.

a. In claim 9, -- said-- or --the-- should be inserted after "into" (line 2) for proper reference to the antecedent.

b. In claim 14, --said-- or –the-- should be inserted before "manifold" for proper reference to the antecedent.

7. The claims are objected to because the lines are crowded too closely together, making reading and entry of amendments difficult. Substitute claims with lines one and one-half or double spaced on good quality paper are required. See 37 CFR 1.52(b).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 1, it is unclear as to the structural relationship the applicant is attempting to recite by "having a top" and "having a manifold", and where it is disclosed in the specification and drawings. Furthermore, it is unclear as to how "a bottom" and "a means for heating interior" are structurally related to other elements of the vessel.

With respect to claim 2, it is unclear as to how "a means for generating a vacuum" is structurally related to "said manifold", and where it is disclosed in the specification and drawings. Furthermore, it is unclear as to how "gases" relates to "gases", as it refers to claim 1.

With respect to claim 3, it is unclear as to the structural relationship between the "removable tray" and other elements of the apparatus.

With respect to claim 4, it is unclear as to the structural limitation the applicant is attempting to recite by "comprises 0 to 4 sides", and what is intended by "0 sides", and where it

is disclosed in the specification and drawings. Furthermore, it unclear as to how the "sides" are structurally related to the apparatus. Furthermore, "sides" lacks proper positive antecedent basis. Likewise in claim 5 (lines 1 & 2).

With respect to claim 5, it is unclear as to the structural limitation the applicant is attempting to recite by "0 sides", and where it is disclosed in the specification and drawings. Furthermore, it is unclear as to what is intended by "the tray effectively forms the sides", and where it is disclosed in the specification and drawings. Furthermore, "effectively" is considered vague and indefinite. Furthermore, it is unclear as to what is intended by "insertion [of the tray] into said vessel". Also, it is unclear as to how "tray(s)" relates to "a removable tray", as it refers to claim 3. Likewise, see claims 6, 9, 10 and 17.

With respect to claim 6, line 2, it is unclear as to which bottom is implied (note "bottom" in claim 6, line 1 and claim 1, line 2. Furthermore, it is unclear as to the structural relationship between "a bottom" and "said tray". Furthermore, it is unclear as to what the applicant is attempting to recite by "said bottom capable of supporting matrices". Furthermore, it is unclear as to the structural relationship the applicant is attempting to recite by "a bottom having orifices". Furthermore, "orifices" (lines 1 & 3), "matrices" (lines 2 & 3) and "air" lack proper positive antecedent basis.

With respect to claims 7 and 8, it is unclear as to how "said bottom" relates to "a bottom set forth in claim 1.

With respect to claim 9, it is unclear as to the structural limitation the applicant is attempting to recite by "size, dimension, and capacity so that it can be moved and loaded into vessel with a fork truck". Furthermore, "it" is vague and indefinite.

With respect to claim 10, "matrices" lacks proper positive antecedent basis. Furthermore, it is unclear as what the applicant is attempting to recite by "loaded... from top".

With respect to claim 11, "opposite end", "fork lift pockets" and "treated matrix" lack proper positive antecedent basis. Furthermore, it is unclear as to the structural relationship between "a hinged gate" and "said tray". Furthermore, it is unclear as to the structural limitation the applicant is attempting to recite by "at opposite end of fork lift pockets".

With respect to claim 12, "matrices" lacks proper positive antecedent basis. Furthermore, it is unclear as to the structural relationship between "a means for mechanically agitating" and other elements of the apparatus.

With respect to claim 13, it is unclear as to the structural relationship between "a means for the introduction" and other elements of the apparatus, and where it is disclosed in the specification and drawings. Furthermore, "the introduction of chemical treatment additives" lacks proper positive antecedent basis.

With respect to claim 14, "bottom surface", "tray(s)" (lines 2-4), "air", and "matrices" lack proper positive antecedent basis. Furthermore, "high" and "substantially" are vague and indefinite ("high" is also a relative term). Furthermore, it is unclear as to the structural relationship between the "tray" and the "manifold", and what is intended by "to seal tray to manifold", and where it is disclosed in the specification and drawings.

With respect to claim 15, "matrix particulates" and "the purge gas air stream" lack proper positive antecedent basis. Also, "dry" is a relative term and therefore vague and indefinite.

With respect to claim 16, it is unclear as to what the applicants are attempting to recite and whether the applicant intends to positively recite "a controller system", "transducers", and "a

computer". Furthermore, it is unclear as to the structural relationship between "a means for remotely monitoring", "a controller system", "transducers", "a computer" and the other elements of the apparatus, and where it is disclosed in the specification and drawings. Also, it is unclear as to what is intended by "convey information", and where it is disclosed in the specification and drawings. Furthermore, "transducers" lacks proper positive antecedent basis.

With respect to claim 17, it is unclear as to how the "trays" of the "between 1 and 4 trays", are related to the "removable tray" set forth in claim 3.

With respect to claim 19, it is unclear as to what the applicant is attempting to recite by "said top can be moved vertically", and where it is disclosed in the specification and drawings. Also, "can be" is vague and indefinite.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-4 and 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Weyand et al. (U.S. 5,300,137).

With respect to claim 1, Weyand et al. teach an apparatus for the separation of waste constituents from matrices, comprising: a vessel **8** having a top and bottom (column 11, lines 32-40); an exhaust air outlet **10**, and a means for heating interior of said vessel (by definition a "furnace"; also note column 10, lines 5-34).

With respect to claim 2, Weyand et al. teach means for generating a vacuum **32** for withdrawing gases through said manifold **10**.

With respect to claim 3, Weyand et al. teach a removable tray **40** (column 11, lines 20).

With respect to claim 4, Weyand et al. teach 4 sides (column 11, lines 32-40).

With respect to claim 17, Weyand et al. teach an apparatus comprising a plurality of trays **40** (column 11, lines 42-44).

With respect to claim 18, Weyand et al. teach an apparatus that is permanently mounted or mobile (column 9, lines 30-32 and column 12, lines 13-14).

Instant claims 1-4 and 17-18 read on the apparatus of Weyand et al.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 5-6, 9, 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weyand et al. (U.S. 5,300,137) in view of Kant et al. (U.S. 5,656,494).

With respect to claim 5, the same comments with respect to Weyand et al. apply. However, Weyand et al. lack an apparatus with 0 sides where the tray effectively forms the sides of the vessel.

Kant et al. teach an apparatus with 0 sides where the tray **12** effectively forms the sides of the vessel (Fig. 6).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Weyand according to Kant to form an apparatus where trays effectively form the sides of a vessel because the modular nature allows the number of trays (and corresponding active surface area) to be increased or decreased depending upon decontamination requirements, and is not confined to set dimensions, as taught by Kant et al.

With respect to claim 6, the same comments with respect to Weyand et al. apply. However, Weyand et al. is silent as to a tray comprising a bottom having orifices and capable of supporting matrices and allowing air to pass upwardly through the matrices and orifices.

Kant et al. teach a tray comprising a bottom having orifices and capable of supporting matrices and allowing air to pass upwardly through the matrices and orifices.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tray of Weyand et al. according to Kant et al. in order to provide orifices to the bottom of the tray because the orifices provide communication and dispersion means for vapor through the trays and material to be treated.

With respect to claim 9, the same comments with respect to Weyand et al. apply. However, Weyand is silent as to a tray of size, dimension, and capacity so that it can be moved and loaded into a vessel with a fork truck.

Kant et al. teach a tray **12** that may be lifted by light equipment such as a fork-lift (column 5, lines 58-62) and of virtually any size (column 5, lines 32-34).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tray of Weyand et al. according to the dimensions of Kant et al. so that the tray can be moved with a fork truck because the modification allows the apparatus to be assembled on-site with minimal equipment and personnel, as taught by Kant et al. Furthermore, changes in size of an article was held to be obvious. *In re Rose 105 USPQ 237 (CCPA 1955).*

With respect to claim 16, the same comments with respect to Weyand et al. apply. Furthermore, Weyand teaches careful control of the process (column 9, lines 41-45) but does not disclose a means for remotely monitoring the operation of the apparatus.

Kant et al. teaches means for remotely monitoring the operation of the apparatus comprising a controller system, transducers **70**, and a computer (column 7, lines 38-57).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the monitoring means of Kant et al. to the apparatus of Weyand et al. because the monitoring and control means measure the effectiveness of the separation and allow tighter control of process conditions, such as temperature and moisture, as taught by Kant et al.

With respect to claim 19, the same comments with respect to Weyand et al. apply. However, Weyand et al are silent as to an apparatus where the top can be moved vertically.

Kant et al. discloses a top **26** on a plurality of trays **12** stacked in a vertical arrangement (Fig. 1; column 4, lines 17-42), implying vertical movement of the top **26**.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a top as taught by Kant et al. for the modified apparatus of Weyand et al.

because the top can be easily removed from the vessel using lift equipment in order to add treatment additives, for example.

11. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weyand et al. (U.S. 5,300,137) in view of Kant et al. (U.S. 5,656,494), as applied to claims 1-3 and 6, and further in view of Hill et al. (U.S. 6,146,596).

With respect to claim 7, the same comments with respect to Weyand et al. and Kant et al. apply. Furthermore, Kant et al. teaches a tray bottom **34** comprising numerous pores **42**, but is silent as to whether the bottom may be a screen.

Hill et al. teaches a bottom that is a screen (column 3, lines 34-36).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the screen bottom of Hill et al. for the modified tray of Weyand et al. because the use of the screen supports the treatment material while allowing contaminant gases to be pulled through the material, as taught by Hill et al.

With respect to claim 8, the same comments with respect to Weyand et al. and Kant et al. Furthermore, Weyand and Kant are silent as to a bottom that is slotted.

Hill et al. teach a bottom that is slotted **10**.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the slotted bottom of Hill et al. for the modified tray of Weyand et al. because the use of the slotted bottom supports the treatment material while allowing contaminant gases to be pulled through the material, as taught by Hill et al.

12. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weyand et al. (U.S. 5,300,137) in view of Gerken et al. (U.S. 4,782,625).

The same comments with respect to Weyand et al. apply. However, Weyand et al. is silent as to a tray of at least about 2.5 cubic yards.

Gerken et al. teach a materials dryer **31** that treats contaminated soil in discrete volumes, generally totally approximately 3 cubic yards, at a single time (column 5, lines 40-42).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tray of Weyand et al. to a capacity approximately that of Gerken et al. (of at least about 2.5, or ~3 cubic yards) because the capacity allows treatment of material in bulk. Furthermore, changes in size of an article were held to be obvious *In re Rose 105 USPQ 237 (CCPA 1955).* Also, "about" permits some tolerance. At least about 10% was held to be anticipated by a teaching of a content not to exceed about 8% *In re Ayers, 154 F2d 182, 69 U.S.P.Q. 109 (C.C.P.A. 1946).*

13. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weyand et al. (U.S. 5,300,137) in view of Christianson (U.S. 4,195,744).

The same comments with respect to Weyand et al. apply. However, Weyand et al. are silend as to a tray comprising a hinged gate at an opposite end of the fork lift pockets for unloading treated matrices.

Christianson teaches a container **10** comprising a hinged **52** gate **24** at an opposite end of fork lift pockets **60** for unloading material (column 3, lines25-28).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tray of Weyand et al. to comprise a hinged gate and fork lift pockets

because a hinged gate allows personnel to quickly, easily and safely unload contents of the container, and fork lift pockets allow the container to be easily moved to a desired location by means of a motor vehicle having a fork lift attachment, as taught by Christianson.

14. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weyand et al. (U.S. 5,300,137) in view of Sonnen et al. (U.S. 5,602,035).

With respect to claim 12, the same comments with respect to Weyand et al. apply. Furthermore, Weyand et al. discloses mixing but is silent as to a means for mechanically agitating the matrices.

Sonnen et al. disclose a means for mechanically agitating treatment material located within a container **20**, **21**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the mechanical agitation means of Sonnen et al. to the modified apparatus of Weyand et al. because the mechanical agitation means provides an automatic method of agitating material in a closed container while minimizing the contact between personnel and the harmful material being treated, as taught by Sonnen et al.

With respect to claim 13, the same comments with respect to Weyand et al. apply. Furthermore, Weyand et al. discloses adding treatment, but is silent as to a means for the introduction of chemical treatment additives.

Sonnen et al. disclose a sprinkler means **28** for introduction of treatment additives to treatment material located within a container.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the treatment introduction means of Sonnen et al. to the modified apparatus of Weyand et al. because the treatment introduction means provides an automatic method of adding material to a closed container while minimizing the contact between personnel and the harmful material being treated, as taught by Sonnen et al.

15. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weyand et al. (U.S. 5,300,137) in view of Newsom (U.S. 4,822,651).

The same comments with respect to Weyand et al. apply. However, Weyand et al. are silent as to a vacuum manifold bottom comprising a high temperature silicon or other heat resistant gasket to seal the tray to the manifold.

Newsome teaches a heat resistant (column 3, lines 41-43) seal **34** at the bottom surface of a manifold **18** to seal the edges of a tray to a manifold.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the heat resistant seal of Newsome as a gasket for the modified apparatus of Weyand et al. because the seal is able to provide an air tight vacuum seal capable of operation at high temperatures. In any event, the use of heat resistant gaskets is well known in the art for providing a relatively a leak-proof seal between two mating components.

16. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weyand et al. (U.S. 5,300,137) in view of Moffat (U.S. 5,025,570).

The same comments with respect to Weyand et al. apply. Furthermore, Weyand et al. teach a filter means **34** to remove harmful impurities in exhaust air before discharge through the exhaust means **32** (column 10, lines 1-5) but are silent as to a 1 to 100 micron dry filter.

Moffat teaches a gas filter in the form of a particle trap **49** capable of filtering out particles of sizes up to 100 microns (abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the 1-100 micron filter of Moffat to the modified apparatus of Weyand et al. because the filter allows containment of a larger range of harmful impurities entrained in the exhaust gas.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

17. Claims 1-2 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 10-11 and 15 of U.S. Patent 5,127,343. Although the conflicting claims are not identical, they are not patentably distinct from each other.

With respect to instant claim 1, claim 10 of U.S. '343 claims a container with means for removal of gases and means for heating the interior of the container.

With respect to instant claim 2, claims 10 and 11 of U.S. '343 claim means for removing gases from a container, where said means is a vacuum pump.

18. Claims 3-6, 9, 11, 16-17 and 19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 10, 14, and 21 of U.S. Patent No. 5,127,343 in view of Kant et al. (U.S. 5,656,494).

With respect to instant claim 3, Kant et al. teach a modular, removable tray (column 3, lines 20-25).

With respect to instant claim 4, Kant et al. teach a vessel with 0 sides (Fig. 1).

With respect to instant claim 5, the same comments with respect to Kant apply.

With respect to instant claim 6, the same comments with respect to Kant apply.

With respect to instant claim 9, the same comments with respect to Kant apply.

With respect to instant claim 11, U.S. '343 claims vertical sides hinged to the bottom wall of the shallow container and means attached to one end of the container for lifting and emptying the container, as it refers to claims 14 and 21.

With respect to instant claim 16, the same comments with respect to Kant apply.

With respect to instant claim 17, Kant et al. teach a plurality of trays **12**.

With respect to instant claim 19, the same comments with respect to Kant apply.

19. Claims 7-8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim10 of U.S. Patent No. 5,127,343 in view of Kant et al.

(U.S. 5,656,494), as applied to instant claims 3 and 6, and further in view of Hill et al. (U.S. 6,146,596). The same comments with respect to Kant et al. and Hill et al. apply.

20. Claim 10 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim10 of U.S. Patent No. 5,127,343 in view of Gerken et al. (U.S. 4,782,625). The same comments with respect to Gerken et al. apply.

21. Claims 12-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 10 of U.S. Patent No. 5,127,343 in view of Sonnen et al. (U.S. 5,602,035). The same comments with respect to Sonnen apply.

22. Claim 14 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 10 of U.S. Patent No. 5,127,343 in view of Newsom (U.S. 4,822,651). The same comments with respect to Newsom apply.

23. Claim 15 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 10 of U.S. Patent No. 5,127,343 in view of Moffat (U.S. 5,025,570). The same comments with respect to Moffat apply.

24. Claim 18 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 10 of U.S. Patent No. 5,127,343 in view of Hill et al. (U.S. 6,146,596). Hill et al. teach a portable/mobile unit (column 3, lines 28-32).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of U.S. '343 according to Hill et al. in order to make portable because the cost for transporting the unit to the site to be treated is much less than the cost of

moving the earth to the treatment location and back to the place where the earth is to be used as fill, as taught by Hill et al. In any event, it has been held that making an apparatus portable involves only ordinary skill in the art. *In re Lindberg 93 USPQ 23 (CCPA 1952).*

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A. Leung whose telephone number is 703-305-4951. The examiner can normally be reached on 8:30 am - 5:30 pm M-F, every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marian C. Knode can be reached on 703-308-4311. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

JAL
May 31, 2002

Hien Tran

HIEN TRAN
PRIMARY EXAMINER